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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,637	03/05/2002	Kurt R. Linberg	P-8557.05	9741
27581	7590	01/04/2006	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			EVANISKO, GEORGE ROBERT	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.		Applicant(s)	
	10/091,637		LINBERG, KURT R.	
	Examiner		Art Unit	
	George R. Evanisko		3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/22/05 has been entered.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the original specification does not contain the terminology of claim 21 of “a communications protocol that emulates a client/server model....expert location”.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 21-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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The subject matter which was not described in the original specification is the network connection being “such that a command entered on the programmer can effect an execution of operations at the remote expert location” and that “wherein commands entered on the programmer are executed as if entered directly on the remote data center” in combination with the other elements in the claims. The original specification only stated that the system uses “Telnet”. It did not describe that commands entered on the programmer can effect an execution of operations at the remote expert location or that commands entered on the programmer are executed as if entered directly on the remote data center. Although Telnet may be defined and used as a protocol that emulates a client/server model, that does not mean that the original specification discussed Telnet in the aspect of having features that allow commands entered on the programmer to effect an execution of operations at the remote expert location. Nowhere in the specification are these features discussed and nowhere in the original specification is discussed what commands are entered and what executions of operations do the commands effect at the remote expert location. The examiner is asking the applicant to point out in the original specification where these features, commands, and executions are discussed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21, “the remote expert location” lacks antecedent basis.

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In claim 23, “the processor” and “imbedded systems” lack antecedent basis. In addition, the claim is vague since it is unclear what element is delivering the executable commands to the processor. The claim is vague and indefinite and it is unclear what elements are being positively recited and claimed.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Webb et al (WO 98/42407). Webb states on page 5 that the remote center can communicate with the programmer through the internet and states throughout the specification the use of the communication connection using a protocol that emulates a client/server model so that commands entered on the programmer are executed as if entered directly on the remote center. Specifically, Webb discloses numerous instances of the claimed protocol, such as in the abstract and pages 8, 12, 13, 18, 19, 24, etc. of effecting operations at the remote location by providing the remote location with ECG display data and movement of the pointer in the X and Y direction on the remote data center display.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Snell (6249705). Snell states: that the programmer and server use a X.25, AppleTalk, TCP/IP, etc protocol (col 4); the network server includes components for receiving commands and data from the network programmers (col 4); the network server is controlled, via appropriate commands entered at the network programmer (col 4); the network server provides data...on demand to the network programmer based upon commands entered at the network programmer (col 7); the network server provides computing services to the network programmer and executes programs on-demand utilizing any combination of data provided by the network programmer (col 7). Snell therefore teaches a communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if entered directly on the remote data center to effect an execution of operations at the remote location.

In the alternative, Snell discloses the claimed invention except for the communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if entered directly on the remote data center (i.e. Telnet). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical communication system as taught by Snell, with a communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if

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entered directly on the remote data center since it was known in the art that medical communication systems use a communications protocol that emulates a client/server model wherein commands entered on the programmer are executed as if entered directly on the remote data center (known to use TCP/IP based applications, such as Telnet) to easily and quickly exchange data over the internet or a communications network and/or to provide control of the remote location through the local location.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell.

Snell discloses the claimed invention except for the database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical computerized system as taught by Snell, with a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs since it was known in the art that medical computerized systems use a database including usage logs including clock/timer data relating to the number of connections between the programmer and an IMD and error logs to provide a physician or programmer with information of when the IMD and programmer were both used and if any errors were encountered for determinations in FDA approval of the devices, for determining if the devices are faulty, and/or for determining the history of people programming the device and changes made to the devices.

Response to Arguments

Applicant's arguments filed 11/22/05 have been fully considered but they are not persuasive. The arguments that nowhere in Webb are there any indications that a command entered on the programmer can "effect the execution of operations at the remote expert location" is not persuasive since Webb discloses the use of commands entered at the local programmer to effect operations at the remote center, such as effecting the display and X and Y coordinates of the pointer at the remote display. The argument that Snell's communication protocol does not meet the functionality of a Telnet communication are not persuasive since the 102/103 rejection above addresses the claimed limitations and functions. In addition, a 103 rejection was provided for Snell for a Telnet type protocol to show that it would be obvious to one having ordinary skill in the art at the time the invention was made to use a communications protocol that emulates a client/server model (Telnet). Webb et al, Iliff, Bacus et al, and Braun et al, were previously provided as four teachings of many showing the use of a Telnet type system (i.e. a communication connection using a protocol that emulates a client/server model so that commands entered on the programmer are executed as if entered directly on the remote center) to easily and quickly exchange data over a network/internet.

In addition, a 112 first paragraph rejection was added for new matter in regards to claim 21 that contains the limitations of "commands entered on the programmer can effect...location" and "wherein commands entered on the programmer...center" since the original specification did not disclose these features. Although the original specification stated that Telnet was used, it does not automatically suggest that all the features and capabilities of Telnet are incorporated into the original disclosure and that the remote data center and programmer incorporate these

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features and functions. The specification states on page 17 that the system uses Telnet to wirelessly access data center and that Telnet emulates a client/server model but does not state that commands entered on the programmer can effect an execution of operations at the remote data center.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Evanisko whose telephone number is 571 272 4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571 272 4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


George R Evanisko
Primary Examiner
Art Unit 3762

1/2/6

GRE
January 2, 2006